MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Receipt # 3760503

Book Page CIVIL

No. Pages: 6

Instrument: AFFIRMATION

Control #: 202402280034
Index #: E2024003035

Date: 02/28/2024

Time: 8:27:09 AM

Return To:
JENNIFER MORGAN LEVY

Dias, Liyanagamage Ranganath Prabashwara

University of Rochester

Total Fees Paid: $0.00

Employee:

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS ENDORSEMENT, REQUIRED BY SECTION 317-a(5) & SECTION 319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

In the matter of the Application of Liyanagamage Ranganath Prabashwara Dias, Petitioner, -against- UNIVERSITY OF ROCHESTER, Respondent. For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules	INDEX NO.: E2024003035 Honorable Sam Valleriani AFFIRMATION OF J MORGAN LEVY

J. Morgan Levy, an attorney admitted to practice in the courts of the State of New York, affirms, under penalty of perjury pursuant to CPLR 2106, the following:

1. I am not a party to this action.

2. I represent the petitioner, Liyanagamage Ranganath Prabashwara Dias ("Dr. Dias"), in the above captioned case.

3. I am fully competent to make this affirmation and I have personal knowledge of the facts stated in this affirmation.

4. Dr. Dias brings this article 78 petition in response to his employer, the University of Rochester's (hereinafter "the University") biased and unfair investigation into allegations he engaged in research misconduct (hereinafter "the Investigation") and its failure to follow its own policies and procedures and to provide Dr. Dias due process.

5. Dr. Dias provided evidence to support his claims key individuals involved in the Investigation acted with bias, and the University failed to provide him due process.

6. Dr. Dias specifically complained the University's Provost David Figlio, its Dean of the Hajim School of Engineering and Applied Sciences, Wendi Heinzelman, and Vice President for Research, Stephen Dewhurst's actions and inactions demonstrate such bias and a failure to provide Dr. Dias basic due process.

7. Dr. Dias complained of the following (and other) behaviors:

- Dean Heinzelman removing his students, violating academic freedom, and doing so before any investigation, demonstrating her belief in his guilt prior to the conclusion of the investigation
- Vice President Dewhurst choosing biased, non-University faculty to serve on the Investigation Committee
- The University allowing biased witnesses to provide testimony and make relevancy determinations on behalf of the Investigation Committee
- University administrators working with University counsel to collude with witnesses
- University administrators drafting and providing *Nature* magazine a retraction letter before the Investigation Committee concluded its findings
- Not accommodating Dr. Dias's requests for more time for respond to the Investigation Committee during the holidays and when his wife had just given birth
- Not allowing Dr. Dias to have an attorney present,
- Failing to provide Dr. Dias access to full versions of exhibits used by the Investigation Committee in its determination.

8. In August 2023, prior to the conclusion the Investigation (and as more fully described in Dr. Dias's prior Article 78 petition and related exhibits, *see* NYSCEF doc. 4), Dean Heinzelman made the unilateral decision to remove all of Dr. Dias's students from his laboratory, teaching, and mentoring.

9. As these students would serve as witnesses in the Investigation, Dean Heinzelman's actions prejudiced student witnesses and gave the impression of wrongdoing by Dr. Dias before the Investigation was completed.

10. Dean Heinzelman reported that these students requested to be removed from Dr. Dias's supervision and mentoring. This is not true. *See id.*, pg. JMLAffDavis000012, paras. 59-61, and JMLAffDavis000157.

11. Provost David Figlio ignored Dr. Dias's complaint of Dean Heinzelman's impingement of his academic freedom and instead endorsed her wrongful removal of Dr. Dias's students. *See id.* at JMLAffDavis000186.

12. Dr. Dias appropriately asked the University to establish a grievance committee concerning Dean Heinzelman's removal of his students and advisees and the Provost's acceptance of this behavior, but the University refused. *See id.* at JMLAffDavis000159, JMLAffDavis000165-210.

13. On December 13, 2023, Dr. Dias filed an article 78 petition (the "December Petition") in the Supreme Court for the County of Monroe, requesting the court intervene to force the

University to follow its policies and establish a grievance committee to redress the unilateral removal of students from his teaching, coaching, and mentoring responsibilities. *See id.*

14. On January 15, 2024, Dr. Jane Liesveld, Chair of the University Committee on Tenure and Promotion (UCTP), notified Dr. Dias his grievance warrants a hearing committee, writing:

> *I write this e-mail to inform you that the University Committee on Tenure and Privileges has conferred and has now concluded based on the receipt of affidavits on 1/10/24 that the grievance does merit the formation of a hearing committee. Once a committee is formed, you will hear of next steps from the Provost's office.*

A true and accurate copy of this email is attached as Exhibit 1.

15. On February 2, 2024, Dr. Dias informed Dr. Liesveld he had not yet received any contact from the provost's office since her email two weeks earlier. A true and accurate copy of this email is attached as Exhibit 1.

16. In this same email, Dr. Dias informed Dr. Liesveld that beyond the student affidavits already submitted in support of his position, he had received confirmation from both Drs. Renato Perucchio and John Lambropoulos regarding their willingness to provide testimony before the Grievance Committee to corroborate what the students stated: they had not wanted to leave Dr. Dias' teaching and mentorship, but instead, Dr. Heinzelman removed them.

17. Dr. Dias also expressed how the involvement of the Provost's office in the formation of the Grievance Committee is problematic, since Provost Figlio had supported the contested narrative that the student transfers were voluntary.

18. Dr. Dias requested information regarding protocol to manage this conflict of interest.

19. Dr. Liesveld responded on February 2, 2024 and shared the provost's office provides administrative assistance to the committee, and designates an "academic lead." *See* Exhibit 1.

20. According to the University Faculty Handbook, an academic lead "defends the decision being grieved. The academic lead may be the individual who made the decision that is being grieved." Doc. 4, pg. JMLAffDavis000107.

21. Dr. Liesveld also shared,

> *"I do not know how COI matters involving the provost's office are handled. Certainly individuals with their own personal conflicts would have to recuse themselves from involvement. Beyond that, I am not sure how general conflicts are dealt with."* Exhibit 1.

22. Dr. Liesveld also shared it took time to find five tenured faculty members willing to serve on the Grievance Committee.

23. Dr. Dias responded, expressing further concerns students and faculty willing to provide testimony contradicting the University's Provost may be subject to retaliation.

24. Dr. Dias also wrote of his worry that delays in arranging the grievance process would result in his being subject to a finding pursuant to the Investigation which would preclude his ability to participate in the grievance process.

25. On February 14, 2024, I filed this Article 78, along with a request for a Temporary Restraining Order (TRO) prohibiting the University from concluding its investigation process until Dr. Dias's grievance was addressed. *See* docs. 1 through 27.

26. The following day, I emailed the University's attorney, Ms. Laura Harshbarger, her of the filing and providing copies of the same, including copies of the proposed order requiring the University stop the Investigation until the grievance committee had addressed Dr. Dias's grievance. A full and accurate copy of this correspondence is included at Exhibit 2.

27. Also on February 14, 2024, Dr. Dias received a letter from Dean Henizelman informing Dr. Dias that Provost Figlio had received, read, and considered the Investigation Committee's final report, including Dr. Dias's comments to the draft investigation report and had accepted the Committee's findings and conclusions. Dean Heinzelman further notified Dr. Dias the University was considering certain corrective actions which would be communicated to him at a later date. A true and accurate copy of this correspondence is included at doc. 21.

28. On February 15, 2024, Dr. Dias submitted another grievance to Dr. Liesveld titled "additional grievance". *See* Exhibit 3. Despite this grievance alleging Provost Figlio was intentionally delaying the adjudication of Dr. Dias's prior grievance, Dr. Liesveld informed Dr. Dias the Provost's office would, with the UCTP, make a determination regarding whether his grievance had prima facie merit.

29. Dr. Dias's Verified Article 78 Petition and all related documents including the draft TRO were served on the University via hand delivery on February 19, 2024. *See* Exhibit 4, Affidavit of Service.

30. It was not until February 22, 2024, Ms. Carly Howlett, Administrator for the Office of the Faculty Senate, notified Dr. Dias that he could participate in an interview with the grievance committee on a non-specified Friday between 3-4PM. It is unclear which of Dr. Dias's grievances this request for an interview relates to. A full and accurate copy of this correspondence is included at Exhibit 5.

31. On February 26, 2024, Provost Figlio delivered to Dr. Dias a letter indicating the Investigation Committee submitted its final report to the University on February 9, 2024 and he reviewed the final report and all relevant materials.

32. Dr. Dias has never been permitted to see the "final report" referenced in paragraph 31.

33. Dr. Figlio further informed Dr. Dias that he was referring Dr. Dias's case to the UCTP

"for potential removal prior to the end of the period for which [he was] appointed and termination of [his] employment by the Board of Trustees for academic cause." A full and accurate copy of this correspondence is included at Exhibit 6.

34. This letter from Provost Figlio states,

> *With respect to your noted concerns about possible conflicts of interest, I requested and received an explanation of the University's response to that concern on February 13, 2024. I am satisfied there was no conflict of interest and I accepted the Investigation Committee's findings of research misconduct.*

35. Provost Figlio's statement in para. 34 ignores the UCTP's determination a grievance committee was warranted to review his allegations of bias in the Investigation process.

36. The hearing procedures for UCTP termination process Provost Figlio has referred Dr. Dias to are described in Section IV.D of the University of Rochester Faculty Handbook.

37. The procedures do not provide Dr. Dias (or the UCTP) an opportunity to challenge, in any way, the factual findings of the Investigation, meaning the only opportunity Dr. Dias has to introduce evidence of bias in this process is through the grievance procedure.

Dated: February 27, 2023
Monroe County, New York

Respectfully submitted,

J. MORGAN LEVY FIRM PLLC

By: */s/ J. Morgan Levy*

J. Morgan Levy, Esq.
24 N. Main Street
Fairport, NY 14450
T: (585) 678-1084
Email: morgan@jmorganlevyfirm.com